

Worker Misclassification - Is Your Company at Risk?

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Employment related taxes are a large part of business owners' overall tax burdens. As such, employers are continually looking for ways to reduce that burden.

Classifying workers as independent contractors is an attractive option for offsetting employment related taxes. By classifying workers as independent contractors, as opposed to direct employees, employers can:

- avoid paying Social Security, Medicare and unemployment taxes;
- ignore the confines of minimum wage, overtime and anti-discrimination regulations;
- avoid providing fringe benefits, such as pensions, health insurance, vacation pay and sick pay, that are given to direct employees.

Not surprisingly, independent contractors can be up to 30% less expensive to employ than direct employees. Business owners can then either pocket the savings, or gain competitive advantage by charging less for their services. Given all the potential benefits, why shouldn't you classify all your employees as independent contractors?

Unfortunately, you may not simply choose one classification over another. The Internal Revenue Service (IRS) has strict guidelines about employment classification, and both federal and state government agencies are cracking down on businesses that ignore those guidelines.

When the IRS investigates worker classification, it conducts an audit (including face-to-face interviews and close examination of the employer's tax returns) to determine the amount of control the business has over the worker. If the business is found to have misclassified an employee as an independent contractor, the IRS will seek to collect delinquent employment taxes and may impose severe financial penalties. Misclassification may lead to a host of other problems, including those with work authorization, benefits eligibility, workers' compensation insurance and violation of state worker misclassification laws.

Bottom line, improperly classifying employees as independent contractors can be both costly and burdensome for a business owner.

Is your company at risk?

It may be difficult to tell. There is no definitive "litmus test" for worker classification; however, the general rule is that an individual is an independent contractor if the employer (the person for whom

the services are performed) has the right to control or direct only the *result* of the work – and not the *means* and *methods* of accomplishing the result. If you answer “Yes” to one or more of these questions, you probably have a direct employee working for you:

1. Does the worker have to comply with your instructions about when, where and how the work is completed? Independent contractors usually set their own hours and work where they want.
2. Does your company furnish tools and materials used by this worker? Typically, contractors use their own tools and equipment.
3. Does this person work only for you? Independent contractors are free to market their services to others and to work for as many people as they want.
4. Do you pay this worker regular wages? Most independent contractors charge a flat fee for their services; however, certain professionals (such as attorneys) charge clients by the hour, even though they are clearly not employees.
5. Did this individual agree to work for you for an indefinite length of time? Unlike regular employees, who work for an employer indefinitely until either party willfully terminates employment, independent contractors are hired for a specified time period or to complete a discrete project.

These are just a few of the types of questions the IRS would use to determine a worker's classification. If you answered “Yes” to any of them, it would be wise to consult with your attorney to help you develop a classification plan that complies with IRS guidelines.

[Snelling's temporary and contract staffing services](#) provide a safe, legal alternative to hiring independent contractors on your own. Use our People+ to get work done, complete critical projects and access the expertise your business needs – while avoiding the risk of worker misclassification.

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